

**ASSEMBLY BILL**

**No. 794**

**Introduced by Assembly Member Chu**

February 18, 2005

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An act to amend Section 6254 of the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 794, as introduced, Chu. Public records: health care contracts.

Existing law, the California Public Records Act, requires public agencies to make their records available for public inspection unless specific exemptions apply. The act provides that records relating to the negotiation of contracts for health coverage entered into by the state with health plans under specified programs generally are exempt from disclosure but that those contracts, except for rates, shall be open to public inspection one year after being executed, and the rates in those contracts shall be open to public inspection 3 years after being executed. The act further provides that, notwithstanding these provisions, each entire contract shall be open to inspection by the Joint Legislative Audit Committee.

This bill would provide that these contracts also shall be open to inspection by the Legislative Analyst's office.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 6254 of the Government Code is  
2     amended to read:

1     6254. Except as provided in Sections 6254.7 and 6254.13,  
2 nothing in this chapter shall be construed to require disclosure of  
3 records that are any of the following:

4     (a) Preliminary drafts, notes, or interagency or intra-agency  
5 memoranda that are not retained by the public agency in the  
6 ordinary course of business, provided that the public interest in  
7 withholding those records clearly outweighs the public interest in  
8 disclosure.

9     (b) Records pertaining to pending litigation to which the  
10 public agency is a party, or to claims made pursuant to Division  
11 3.6 (commencing with Section 810), until the pending litigation  
12 or claim has been finally adjudicated or otherwise settled.

13     (c) Personnel, medical, or similar files, the disclosure of which  
14 would constitute an unwarranted invasion of personal privacy.

15     (d) Contained in or related to any of the following:

16     (1) Applications filed with any state agency responsible for the  
17 regulation or supervision of the issuance of securities or of  
18 financial institutions, including, but not limited to, banks, savings  
19 and loan associations, industrial loan companies, credit unions,  
20 and insurance companies.

21     (2) Examination, operating, or condition reports prepared by,  
22 on behalf of, or for the use of, any state agency referred to in  
23 paragraph (1).

24     (3) Preliminary drafts, notes, or interagency or intra-agency  
25 communications prepared by, on behalf of, or for the use of, any  
26 state agency referred to in paragraph (1).

27     (4) Information received in confidence by any state agency  
28 referred to in paragraph (1).

29     (e) Geological and geophysical data, plant production data,  
30 and similar information relating to utility systems development,  
31 or market or crop reports, that are obtained in confidence from  
32 any person.

33     (f) Records of complaints to, or investigations conducted by,  
34 or records of intelligence information or security procedures of,  
35 the office of the Attorney General and the Department of Justice,  
36 and any state or local police agency, or any investigatory or  
37 security files compiled by any other state or local police agency,  
38 or any investigatory or security files compiled by any other state  
39 or local agency for correctional, law enforcement, or licensing  
40 purposes, except that state and local law enforcement agencies

shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflect the analysis or conclusions of the investigating officer.

Customer lists provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision.

Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or

1 requests for assistance received by the agency and the time and  
2 nature of the response thereto, including, to the extent the  
3 information regarding crimes alleged or committed or any other  
4 incident investigated is recorded, the time, date, and location of  
5 occurrence, the time and date of the report, the name and age of  
6 the victim, the factual circumstances surrounding the crime or  
7 incident, and a general description of any injuries, property, or  
8 weapons involved. The name of a victim of any crime defined by  
9 Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286,  
10 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code  
11 may be withheld at the victim's request, or at the request of the  
12 victim's parent or guardian if the victim is a minor. When a  
13 person is the victim of more than one crime, information  
14 disclosing that the person is a victim of a crime defined by  
15 Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 286, 288,  
16 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may  
17 be deleted at the request of the victim, or the victim's parent or  
18 guardian if the victim is a minor, in making the report of the  
19 crime, or of any crime or incident accompanying the crime,  
20 available to the public in compliance with the requirements of  
21 this paragraph.

22 (3) Subject to the restrictions of Section 841.5 of the Penal  
23 Code and this subdivision, the current address of every individual  
24 arrested by the agency and the current address of the victim of a  
25 crime, where the requester declares under penalty of perjury that  
26 the request is made for a scholarly, journalistic, political, or  
27 governmental purpose, or that the request is made for  
28 investigation purposes by a licensed private investigator as  
29 described in Chapter 11.3 (commencing with Section 7512) of  
30 Division 3 of the Business and Professions Code, except that the  
31 address of the victim of any crime defined by Section 220, 261,  
32 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289,  
33 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall remain  
34 confidential. Address information obtained pursuant to this  
35 paragraph may not be used directly or indirectly, or furnished to  
36 another, to sell a product or service to any individual or group of  
37 individuals, and the requester shall execute a declaration to that  
38 effect under penalty of perjury. Nothing in this paragraph shall be  
39 construed to prohibit or limit a scholarly, journalistic, political, or

1 government use of address information obtained pursuant to this  
2 paragraph.

3 (g) Test questions, scoring keys, and other examination data  
4 used to administer a licensing examination, examination for  
5 employment, or academic examination, except as provided for in  
6 Chapter 3 (commencing with Section 99150) of Part 65 of the  
7 Education Code.

8 (h) The contents of real estate appraisals or engineering or  
9 feasibility estimates and evaluations made for or by the state or  
10 local agency relative to the acquisition of property, or to  
11 prospective public supply and construction contracts, until all of  
12 the property has been acquired or all of the contract agreement  
13 obtained. However, the law of eminent domain shall not be  
14 affected by this provision.

15 (i) Information required from any taxpayer in connection with  
16 the collection of local taxes that is received in confidence and the  
17 disclosure of the information to other persons would result in  
18 unfair competitive disadvantage to the person supplying the  
19 information.

20 (j) Library circulation records kept for the purpose of  
21 identifying the borrower of items available in libraries, and  
22 library and museum materials made or acquired and presented  
23 solely for reference or exhibition purposes. The exemption in this  
24 subdivision shall not apply to records of fines imposed on the  
25 borrowers.

26 (k) Records, the disclosure of which is exempted or prohibited  
27 pursuant to federal or state law, including, but not limited to,  
28 provisions of the Evidence Code relating to privilege.

29 (l) Correspondence of and to the Governor or employees of the  
30 Governor's office or in the custody of or maintained by the  
31 Governor's Legal Affairs Secretary, provided that public records  
32 shall not be transferred to the custody of the Governor's Legal  
33 Affairs Secretary to evade the disclosure provisions of this  
34 chapter.

35 (m) In the custody of or maintained by the Legislative  
36 Counsel, except those records in the public database maintained  
37 by the Legislative Counsel that are described in Section 10248.

38 (n) Statements of personal worth or personal financial data  
39 required by a licensing agency and filed by an applicant with the

1 licensing agency to establish his or her personal qualification for  
2 the license, certificate, or permit applied for.

3 (o) Financial data contained in applications for financing  
4 under Division 27 (commencing with Section 44500) of the  
5 Health and Safety Code, where an authorized officer of the  
6 California Pollution Control Financing Authority determines that  
7 disclosure of the financial data would be competitively injurious  
8 to the applicant and the data is required in order to obtain  
9 guarantees from the United States Small Business  
10 Administration. The California Pollution Control Financing  
11 Authority shall adopt rules for review of individual requests for  
12 confidentiality under this section and for making available to the  
13 public those portions of an application that are subject to  
14 disclosure under this chapter.

15 (p) Records of state agencies related to activities governed by  
16 Chapter 10.3 (commencing with Section 3512), Chapter 10.5  
17 (commencing with Section 3525), and Chapter 12 (commencing  
18 with Section 3560) of Division 4 of Title 1, that reveal a state  
19 agency's deliberative processes, impressions, evaluations,  
20 opinions, recommendations, meeting minutes, research, work  
21 products, theories, or strategy, or that provide instruction, advice,  
22 or training to employees who do not have full collective  
23 bargaining and representation rights under these chapters.  
24 Nothing in this subdivision shall be construed to limit the  
25 disclosure duties of a state agency with respect to any other  
26 records relating to the activities governed by the employee  
27 relations acts referred to in this subdivision.

28 (q) Records of state agencies related to activities governed by  
29 Article 2.6 (commencing with Section 14081), Article 2.8  
30 (commencing with Section 14087.5), and Article 2.91  
31 (commencing with Section 14089) of Chapter 7 of Part 3 of  
32 Division 9 of the Welfare and Institutions Code, that reveal the  
33 special negotiator's deliberative processes, discussions,  
34 communications, or any other portion of the negotiations with  
35 providers of health care services, impressions, opinions,  
36 recommendations, meeting minutes, research, work product,  
37 theories, or strategy, or that provide instruction, advice, or  
38 training to employees.

39 Except for the portion of a contract containing the rates of  
40 payment, contracts for inpatient services entered into pursuant to

these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee and the Legislative Analyst's Office. The committee and that office shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) (1) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the

1 applicant is vulnerable to attack or that concerns the applicant's  
2 medical or psychological history or that of members of his or her  
3 family.

4 (2) The home address and telephone number of peace officers,  
5 judges, court commissioners, and magistrates that are set forth in  
6 applications for licenses to carry firearms issued pursuant to  
7 Section 12050 of the Penal Code by the sheriff of a county or the  
8 chief or other head of a municipal police department.

9 (3) The home address and telephone number of peace officers,  
10 judges, court commissioners, and magistrates that are set forth in  
11 licenses to carry firearms issued pursuant to Section 12050 of the  
12 Penal Code by the sheriff of a county or the chief or other head  
13 of a municipal police department.

14 (v) (1) Records of the Major Risk Medical Insurance Program  
15 related to activities governed by Part 6.3 (commencing with  
16 Section 12695) and Part 6.5 (commencing with Section 12700)  
17 of Division 2 of the Insurance Code, and that reveal the  
18 deliberative processes, discussions, communications, or any other  
19 portion of the negotiations with health plans, or the impressions,  
20 opinions, recommendations, meeting minutes, research, work  
21 product, theories, or strategy of the board or its staff, or records  
22 that provide instructions, advice, or training to employees.

23 (2) (A) Except for the portion of a contract that contains the  
24 rates of payment, contracts for health coverage entered into  
25 pursuant to Part 6.3 (commencing with Section 12695) or Part  
26 6.5 (commencing with Section 12700) of Division 2 of the  
27 Insurance Code, on or after July 1, 1991, shall be open to  
28 inspection one year after they have been fully executed.

29 (B) In the event that a contract for health coverage that is  
30 entered into prior to July 1, 1991, is amended on or after July 1,  
31 1991, the amendment, except for any portion containing the rates  
32 of payment, shall be open to inspection one year after the  
33 amendment has been fully executed.

34 (3) Three years after a contract or amendment is open to  
35 inspection pursuant to this subdivision, the portion of the contract  
36 or amendment containing the rates of payment shall be open to  
37 inspection.

38 (4) Notwithstanding any other provision of law, the entire  
39 contract or amendments to a contract shall be open to inspection  
40 by the Joint Legislative Audit Committee *and the Legislative*

1 *Analyst's office*. The committee *and the office* shall maintain the  
2 confidentiality of the contracts and amendments thereto, until the  
3 contract or amendments to a contract is open to inspection  
4 pursuant to paragraph (3).

5 (w) (1) Records of the Major Risk Medical Insurance  
6 Program related to activities governed by Chapter 14  
7 (commencing with Section 10700) of Part 2 of Division 2 of the  
8 Insurance Code, and that reveal the deliberative processes,  
9 discussions, communications, or any other portion of the  
10 negotiations with health plans, or the impressions, opinions,  
11 recommendations, meeting minutes, research, work product,  
12 theories, or strategy of the board or its staff, or records that  
13 provide instructions, advice, or training to employees.

14 (2) Except for the portion of a contract that contains the rates  
15 of payment, contracts for health coverage entered into pursuant  
16 to Chapter 14 (commencing with Section 10700) of Part 2 of  
17 Division 2 of the Insurance Code, on or after January 1, 1993,  
18 shall be open to inspection one year after they have been fully  
19 executed.

20 (3) Notwithstanding any other provision of law, the entire  
21 contract or amendments to a contract shall be open to inspection  
22 by the Joint Legislative Audit Committee *and the Legislative*  
23 *Analyst's office*. The committee *and the office* shall maintain the  
24 confidentiality of the contracts and amendments thereto, until the  
25 contract or amendments to a contract is open to inspection  
26 pursuant to paragraph (2).

27 (x) Financial data contained in applications for registration, or  
28 registration renewal, as a service contractor filed with the  
29 Director of the Department of Consumer Affairs pursuant to  
30 Chapter 20 (commencing with Section 9800) of Division 3 of the  
31 Business and Professions Code, for the purpose of establishing  
32 the service contractor's net worth, or financial data regarding the  
33 funded accounts held in escrow for service contracts held in force  
34 in this state by a service contractor.

35 (y) (1) Records of the Managed Risk Medical Insurance  
36 Board related to activities governed by Part 6.2 (commencing  
37 with Section 12693) or Part 6.4 (commencing with Section  
38 12699.50) of Division 2 of the Insurance Code, and that reveal  
39 the deliberative processes, discussions, communications, or any  
40 other portion of the negotiations with health plans, or the

1 impressions, opinions, recommendations, meeting minutes,  
2 research, work product, theories, or strategy of the board or its  
3 staff, or records that provide instructions, advice, or training to  
4 employees.

5 (2) (A) Except for the portion of a contract that contains the  
6 rates of payment, contracts entered into pursuant to Part 6.2  
7 (commencing with Section 12693) or Part 6.4 (commencing with  
8 Section 12699.50) of Division 2 of the Insurance Code, on or  
9 after January 1, 1998, shall be open to inspection one year after  
10 they have been fully executed.

11 (B) In the event that a contract entered into pursuant to Part  
12 6.2 (commencing with Section 12693) or Part 6.4 (commencing  
13 with Section 12699.50) of Division 2 of the Insurance Code is  
14 amended, the amendment shall be open to inspection one year  
15 after the amendment has been fully executed.

16 (3) Three years after a contract or amendment is open to  
17 inspection pursuant to this subdivision, the portion of the contract  
18 or amendment containing the rates of payment shall be open to  
19 inspection.

20 (4) Notwithstanding any other provision of law, the entire  
21 contract or amendments to a contract shall be open to inspection  
22 by the Joint Legislative Audit Committee. The committee shall  
23 maintain the confidentiality of the contracts and amendments  
24 thereto until the contract or amendments to a contract are open to  
25 inspection pursuant to paragraph (2) or (3).

26 (5) The exemption from disclosure provided pursuant to this  
27 subdivision for the contracts, deliberative processes, discussions,  
28 communications, negotiations with health plans, impressions,  
29 opinions, recommendations, meeting minutes, research, work  
30 product, theories, or strategy of the board or its staff shall also  
31 apply to the contracts, deliberative processes, discussions,  
32 communications, negotiations with health plans, impressions,  
33 opinions, recommendations, meeting minutes, research, work  
34 product, theories, or strategy of applicants pursuant to Part 6.4  
35 (commencing with Section 12699.50) of Division 2 of the  
36 Insurance Code.

37 (z) Records obtained pursuant to paragraph (2) of subdivision  
38 (c) of Section 2891.1 of the Public Utilities Code.

39 (aa) A document prepared by or for a state or local agency that  
40 assesses its vulnerability to terrorist attack or other criminal acts

1 intended to disrupt the public agency's operations and that is for  
2 distribution or consideration in a closed session.

3 (bb) (1) Records of the Managed Risk Medical Insurance  
4 Board related to activities governed by Part 8.7 (commencing  
5 with Section 2120) of Division 2 of the Labor Code, and that  
6 reveal the deliberative processes, discussions, communications,  
7 or any other portion of the negotiations with entities contracting  
8 or seeking to contract with the board, or the impressions,  
9 opinions, recommendations, meeting minutes, research, work  
10 product, theories, or strategy of the board or its staff, or records  
11 that provide instructions, advice, or training to employees.

12 (2) (A) Except for the portion of a contract that contains the  
13 rates of payment, contracts entered into pursuant to Part 8.7  
14 (commencing with Section 2120) of Division 2 of the Labor  
15 Code on or after January 1, 2004, shall be open to inspection one  
16 year after they have been fully executed.

17 (B) In the event that a contract entered into pursuant to Part  
18 8.7 (commencing with Section 2120) of Division 2 of the Labor  
19 Code is amended, the amendment shall be open to inspection one  
20 year after the amendment has been fully executed.

21 (3) Three years after a contract or amendment is open to  
22 inspection pursuant to this subdivision, the portion of the contract  
23 or amendment containing the rates of payment shall be open to  
24 inspection.

25 (4) Notwithstanding any other provision of law, the entire  
26 contract or amendments to a contract shall be open to inspection  
27 by the Joint Legislative Audit Committee. The committee shall  
28 maintain the confidentiality of the contracts and amendments  
29 thereto until the contract or amendments to a contract are open to  
30 inspection pursuant to paragraph (2) or (3).

31 (cc) All information provided to the Secretary of State by a  
32 person for the purpose of registration in the Advance Health Care  
33 Directive Registry, except that those records shall be released at  
34 the request of a health care provider, a public guardian, or the  
35 registrant's legal representative.

36 Nothing in this section prevents any agency from opening its  
37 records concerning the administration of the agency to public  
38 inspection, unless disclosure is otherwise prohibited by law.

39 Nothing in this section prevents any health facility from  
40 disclosing to a certified bargaining agent relevant financing

1 information pursuant to Section 8 of the National Labor  
2 Relations Act.

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